

222510

**Village of Wayne**

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June 2, 2008

Ms Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

**RE: Canadian National Railway Company and  
Grand Trunk Corporation - Control - EJ&E West Company  
Finance Docket No. 35087**

Dear Ms. Quinlan:

The undersigned represents the Village of Wayne, Illinois. The Village hereby states its strong opposition to the Canadian National Railway Company and Grand Trunk Corporation ("CN") *Request For Establishment of Time Limits for NEPA Review and Final Decision* filed in the above captioned matter (Filing 222352). In its filing, the CN requests that the Surface Transportation Board ("STB") establish a schedule as follows:

- |    |   |                   |
|----|---|-------------------|
| 1  | Draft Environmental Impact Statement ("EIS") served | July 15, 2008     |
| 2  | Draft EIS comments due                              | September 2, 2008 |
| 3. | Final EIS served                                    | November 3, 2008  |
| 4  | Final decision served                               | December 1, 2008  |

Such a schedule is grossly unreasonable. It defeats the purpose of an EIS as required by National Environmental Policy Act, 42 U.S.C. § 4321-4335 ("NEPA"), ignores the unprecedented level of public interest in CN's proposed acquisition and serves only the interests of CN.

On November 26, 2007, the STB issued Decision No. 2 which required its Section of Environmental Analysis ("SEA") to prepare an EIS. In its decision the Board stated "a full EIS is warranted in view of the large projected traffic increases on certain line

segments, and the potential impacts of the proposed transaction on a number of communities that would likely result in the increased activity levels on rail line segments and at rail facilities " (FD 35087 Decision No. 2 Page 12) The Board further stated that "the time the EIS will take to prepare cannot be determined ahead of time because there is no way to predict in advance all of the specific issues that may arise. In prior cases the EIS process has ranged from approximately 18 months to several years " (FD 35087 Decision No. 2, Page 13) In addition, the Council on Environmental Quality ("CEQ") guidelines require that the EIS contain a "full and fair discussion of significant environmental impacts" from the proposed transaction "in order to inform decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment " 40 C.F.R. § 1502.1 The CEQ guidelines further provide that "accurate scientific analysis, expert agency comments and public scrutiny are essential to implementing NEPA " 40 C.F.R. § 1500.1(b) As pointed out in their May 21, 2008 letter, (attached hereto as Exhibit "A") Members of Congress Bean, Roskam, Foster, Visclosky, Biggert and Manzullo, the SEA made significant changes when issuing the Final Scope of the EIS due to a number of issues raised by participants Such changes will require additional consideration beyond that planned in the draft scope of study, which changes include the following:

1. Expanding the projection of rail traffic from three to five years,
2. Forecasting highway traffic until 2020,
3. Evaluating the net increase in emissions;
4. Evaluating potential increases in noise and vibration;
5. Addressing quantities and types of hazardous materials that would be transported,
6. Including vehicle delay analysis in some instances of highway/rail at-grade crossings with less than 2500 crossings per day. and
7. Evaluating impact on regional passenger rail (METRA)

To allow for meaningful investigation and exposition of these and other issues, the SEA should be bound only to a schedule that complies with the CEQ guidelines and the intent of NEPA, not a schedule containing artificial time limits intended only to serve the interests of the CN In that this matter has generated a level of an involvement and interest that all parties and the STB recognize to be unprecedented, any schedule for completion of the EIS and comments thereon less than that identified as typical by the STB (18 months to several years) cannot be meaningful to the interested parties and the public and would fail to follow the CEQ guidelines The STB noted as much by stating "in reaching its decision on this case, the Board will take into account the full environmental record, including the draft and final EIS and all public and agency comments received " (Notice of Availability of Final Scope of Study for the Environmental Impact Statement (EIS), STB Finance Docket No. 350875, April 23, 2008)

As part of its basis for its request for establishment of time limits for NEPA review and final decision, the CN claims that if the Board does not render its decision by December 31, 2008, the Stock Purchase Agreement (SPA) between it and the EJ&E

could be terminated by the United States Steel Corporation, (the EJ&E being a wholly owned subsidiary thereof), relying only on Section 2.3 of the SPA. Such a claim is specious. § 9.1(b) of the SPA provides in pertinent part:

"This agreement may be terminated and the transaction contemplated hereby may be abandoned, at any time prior to closing by any party if the Closing shall not have occurred by December 31, 2008, provided that the right to terminate this agreement under § 9.1(b) shall not be available . . . if the reason for the failure of the Closing to occur on or before such date is one or more of the following (C) the STB has not completed such review of the transaction contemplated by this agreement as may be required under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* or the National Historic Preservation Act, 16 U.S.C. § 470 in connection with the exemption proceeding and the control proceeding;" (emphasis in original)

Excerpts from the SPA are attached hereto as Exhibit "B"

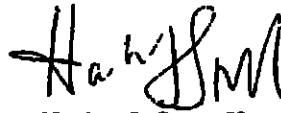
This section of the SPA makes it obvious that the parties contemplated a delay in the closing due to the time required for completion of the STB's decision making process. Any implication by the CN that the schedule for the EIS and the Board's final decision should be governed by a deadline in a contract between two private corporations is ludicrous at best and insulting at worst. Moreover, CN's statement in its Request that if the closing does not occur by December 31, 2008, CN would have lost over a year's worth of time and millions of dollars in expenses should be given little consideration by the Board. CN, of all of the participants in this proceeding, best knew the Board's rules, procedures and the typical time frame for the preparation of an EIS, that being a minimum of 18 months. Poor planning on the part of CN in agreeing to the wording of the SPA should not dictate the schedule to be adopted by the Board. Doing so would recognize only the interests of the CN and would completely ignore the interests of seven counties in Northeastern Illinois and Northwestern Indiana, over thirty municipalities, numerous other government bodies, the millions of people they represent and the public at large. Even assuming *arguendo*, that the CN's interpretation of the SPA is correct, there is nothing to prevent the CN and United States Steel from extending the closing date, as pointed out by Senators Lugar and Bayh and Congressman Visclosky in their letter to the STB dated May 20, 2008 (attached hereto as Exhibit "C") ("If this transaction is so beneficial to both parties, it would be logical to believe that the SPA could be amended by mutual consent and allow the STB to consider this transaction in a reasoned fashion."

### Conclusion

For the foregoing reasons, the Village of Wayne urges the Board to reject CN's requested schedule for NEPA review and Final Decision. To do otherwise would negate the Board's Decision No. 2, fail to allow for a reasoned decision by the Board in this transaction and fail to ensure that the process is meaningful to the public the Board of

course serves. Should any schedule be established, it must recognize the numerous environmental issues raised by Parties to the Proceeding, the unprecedented interest in the Proposed Transaction and the need to allow sufficient time for a meaningful and transparent process.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harlan J. Spiroff". The signature is stylized with a large, looped "H" and a long, sweeping "S" that extends to the right.

Harlan J. Spiroff  
Village Attorney

HJS sd

cc. Senator Richard Durbin  
Senator Barack Obama  
Senator Richard G. Lugar  
Senator Evan Bayh  
Hon. Melissa Bean  
Hon. Peter Roskam  
Hon. William Foster  
Hon. Judy Biggert  
Hon. Donald Manzullo  
Hon. Peter J. Visclosky  
All Parties of Record

MELISSA L. BEAN  
8TH DISTRICT, ILLINOIS

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SUBCOMMITTEE ON FINANCIAL INSTITUTIONS  
AND CONSUMER CREDIT

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE  
AND GOVERNMENT SPONSORED ENTERPRISES

COMMITTEE ON SMALL BUSINESS  
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**Washington, DC 20515-1306**

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Surface Transportation Board  
395 E Street, SW  
Washington, D C 20423-0001

**RE: Canadian National Railway Company and Grand Trunk Corporation Control—EJ&E  
West Company (STB Finance Docket No. 35087)**

Dear Ms. Quinlan

We are writing to express our strong opposition to Canadian National Railway Company and Grand Trunk Corporation's (CN) request for establishment of time limits for NEPA review and final decision (CN-33) that was filed before the Surface Transportation Board (STB) on May 13, 2008 for the above-referenced docket. We urge the board to reject CN's request and allow the NEPA review process to continue on its current course.

On November 26, 2007, the Board issued Decision Number 2, which required the Section of Environmental Analysis (SEA) to prepare an Environmental Impact Study (EIS). In issuing this decision, the Board stated "a full EIS is warranted in view of the large projected traffic increases on certain line segments, and the potential impacts of the proposed transaction on a number of communities that would likely result from the increased activity levels on rail line segments and at rail facilities," (FD 35087 Decision No. 2 Page 12). Further, the Board explained, "The time the EIS will take to prepare cannot be determined ahead of time because there is no way to predict in advance all of the specific issues that may arise. In prior cases, the EIS process has ranged from approximately 18 months to several years," (FD 35087 Decision No. 2 Page 13).

As noted by those involved in this proceeding, the level of input from interested parties has been unprecedented. Between December 21, 2007, when the Section of Environmental Analysis (SEA) published its notice of intent announcing the start of the scoping process, and February 15, 2008, when the comment period ended, approximately 2,600 people attended one of the public scoping sessions held at locations throughout the Chicago region and over 3,600 people registered comments with SEA. Since the close of the comment period, the affected communities have formed a broad coalition to advocate their collective interests on the proposed acquisition, which will likely increase the amount of participation during the comment period on the draft EIS.

During the scoping period, participants raised several issues that led SEA to make significant changes when issuing the final scope. These changes will require additional consideration beyond that originally planned in the draft scope of study. The changes include, but are not limited to:

1. Expanding the projection of rail traffic from three to five years
2. Forecasting highway traffic until 2020



- 3 Evaluating the net increase in emissions
- 4 Evaluating potential increases in noise and vibration
- 5 Addressing quantities and types of hazardous materials that would be transported
- 6 Including vehicle delay analyses in some instances of highway/rail at-grade crossings with less than 2500 vehicle crossings per day
- 7 Evaluating impact on regional passenger rail (METRA)

In addition, many of the interested parties and the SEA itself have raised concerns with the accuracy and scope of information CN has provided for the analysis of this transaction. To date, SEA has sent four formal requests to CN asking for information on over 60 issues

As noted by the Board in Decision Number 2, the time to complete an EIS cannot be determined due to many mitigating factors. Further, the Board cited past EIS's that have taken 18 months or longer to complete. Under the schedule requested by CN, the time from the issuance of the final scope at the end of April to the completion of the final EIS would only be six months. For a case and level of involvement that has been recognized by all participants and the STB to be unprecedented, an EIS process that is completed in less than the typical time frame of 18 months to several years, as cited by the Board as an average, would jeopardize the ability of the STB to do the comprehensive investigation warranted and undermine the credibility and authority of the EIS recommendations and proceedings.

For the aforementioned reasons, we urge the Board to reject CN's request for a time frame to be set on the NEPA review and final decision process. Thank you for your consideration of this matter.

Sincerely,

Melinda L. Beum

Peter J. Gindoff

[Signature]

Judy Biggert

Bill Zoster

[Signature]

cc All Parties of Record

## ARTICLE II

### PURCHASE AND SALE OF SHARES

§2.1 Purchase and Sale of Shares. On the terms, and subject to the conditions, set forth in this Agreement, the Seller agrees to sell, assign, transfer and deliver to the Purchaser on the Closing Date, and the Purchaser agrees to purchase from the Seller on the Closing Date, the Shares, free and clear of all Liens. The certificates representing the Shares shall be duly endorsed in blank, or accompanied by powers duly executed in blank by the Seller in each case, with all necessary transfer tax and other revenue stamps, acquired at the Purchaser's expense, in accordance with Section 10.13, affixed and canceled.

§2.2 Payment of Purchase Price. In full consideration for the purchase of the Shares, on the Closing Date, the Purchaser shall pay to the Seller the sum of Three Hundred Million Dollars (US\$300,000,000) in cash (the "Purchase Price") by wire transfer of immediately available funds to the account or accounts identified by the Seller in writing at least two (2) Business Days prior to the Closing Date.

§2.3 Closing. The purchase and sale referred to in Section 2.1 and the deliveries and transactions referred to in Section 2.4 (the "Closing") shall take place at 10 00 A.M. (Chicago time) at the offices of Freeborn & Peters LLP as soon as practicable after the last of the conditions set forth in Articles VI and VII (other than those which by their nature will be satisfied at the Closing) is satisfied or waived, but in no event later than the second (2nd) Business Day thereafter or at such other time and date as the parties hereto shall agree, but not later than September 1, 2008, unless Closing shall have failed to occur for one or more of the reasons set forth in Section 9.1(b)(ii) of this Agreement, in which case Closing may be extended to no later than December 31, 2008, after which date this Agreement may terminate at the option of either party. Such date is herein referred to as the "Closing Date."

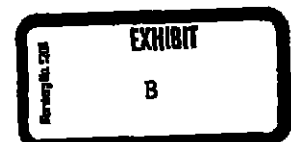
§2.4 Closing Deliveries. Subject to the conditions set forth in this Agreement, the parties shall make the following deliveries and transactions on the Closing Date.

(a) Simultaneously with the Closing, the Seller shall repay all Indebtedness, if any, of the Company by wire transfer of immediately available funds or as otherwise acceptable to the holders of such Indebtedness, and Seller shall deliver to Purchaser all appropriate payoff letters and shall make arrangements reasonably satisfactory to Purchaser for such holders to deliver lien releases and cancelled notes at the Closing.

(b) The Seller shall deliver to Purchaser all of the following.

(i) certificates of the Secretary of State of the applicable jurisdictions of organization providing that each of the Seller and the Company is in good standing;

(ii) copies of all third party (including landlords) and governmental consents, approvals, filings, releases and terminations required in connection with the



give Purchaser reasonable advance notice of its desire to enter onto such property, including a copy of a work plan describing the work to be performed; and (b) cause to be delivered to Purchaser a certificate or certificates of insurance evidencing insurance in the types and coverage limits reasonably acceptable to Purchaser and naming Purchaser as an additional insured.

(b) As a condition to Seller's obligation hererunder, Purchaser shall grant to Seller all necessary and appropriate access to the site of the Environmental Condition and related property for the purpose of conducting any investigation, response action, or other activities required to investigate, respond to, contain and remediate any environmental loss, injury or liability, and/or restore the environment.

(c) Any remediation, restoration, removal, investigation and corrective action conducted by Seller as required by this Agreement shall be considered complete and fully satisfied as to each environmental liability whenever Seller completes the action and satisfies applicable Environmental Laws for property used for Industrial purposes, as that standard is defined by applicable Environmental Laws. For this purpose, a "no further action" determination or the equivalent finding by the Government or Regulatory Authority with jurisdiction over the site shall be conclusive.

## ARTICLE IX

### TERMINATION AND ABANDONMENT

§9.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned, at any time prior to the Closing.

(a) by mutual consent of Seller, on the one hand, and of Purchaser, on the other hand;

(b) by any Party if the Closing shall not have occurred by December 31, 2008; provided that the right to terminate this Agreement under this Section 9.1(b) shall not be available (i) to any Party whose failure to fulfill any obligation under this Agreement shall be the cause of the failure of the Closing to occur on or before such date, or (ii) if the reason for the failure of the Closing to occur on or before such date is one or more of the following: (A) the STB has not issued a final decision in the Exemption Proceeding or the Control Proceeding; (B) a final decision in accordance with Section 6.5 of this Agreement has been issued by the STB but has been stayed pending administrative or judicial review; (C) the STB has not completed such review of the transactions contemplated by this Agreement as may be required under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. or the National Historic Preservation Act, 16 U.S.C. § 470, in connection with the Exemption Proceeding and the Control Proceeding; or (D) the labor implementing agreements required by Section 6.14 of this Agreement have not been obtained;

(c) by either the Seller or the Purchaser if there has been a material breach of any covenant or a material breach of any representation or warranty of the Purchaser or the Seller, respectively, which breach would cause the failure of any condition precedent set forth in Article VI or VII, as the case may be; provided that any such breach of a covenant or



representation or warranty has not been cured within twenty (20) Business Days following receipt by the breaching party of written notice of such breach;

(d) by any Party, if there shall be any Law of any competent authority that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or if any Order of any competent authority prohibiting or denying approval of such transactions is entered and such Order shall become final and non-appealable;

(e) by the Purchaser, if the STB shall have issued a decision (which decision shall not have been stayed or enjoined) that (A) constitutes a final non-appealable order approving, exempting or otherwise authorizing consummation of the transactions contemplated by this Agreement (or subsequently presented to the STB by agreement of Seller and the Purchaser), as may require such authorization and (B) imposes any conditions or requirements contrary to Section 6.5(b); or

(f) by the Purchaser if any Governmental or Regulatory Authority imposes material conditions on the transactions contemplated by this Agreement, which are, in Purchaser's sole discretion, unacceptable to Purchaser.

Notwithstanding any provision to the contrary in this Agreement, the determination by the STB that the transactions contemplated by this Agreement constitute a "significant" transaction within the meaning of 49 C.F.R. §1180.2(b) shall not constitute a basis for the termination of this Agreement by Purchaser

**§9.2 Effect of Termination.** (a) If this Agreement is terminated pursuant to Section 9.1 by the Purchaser, on the one hand, or Seller, on the other hand, written notice thereof shall be given to the other party specifying the provision of Section 9.1 pursuant to which such termination is made and describing (in reasonable detail) the event(s) giving rise to such termination, and this Agreement shall be terminated and become void and of no effect with no further liability on the part of any party or any of their respective Affiliates, officers, directors, employees, advisors, consultants, agents or other representatives (except that the provisions of Section 5.3(c) (Confidentiality), Section 5.6 (Public Announcements), Section 5.11(c) (Transfer Taxes), Section 9.1 (Termination), this Section 9.2, Section 10.1 (Expenses), Section 10.2 (Governing Law/Jurisdiction) and Section 10.12 (Waiver of Jury Trial) shall survive any termination of this Agreement and continue in full force and effect).

(b) Upon termination of this Agreement by Purchaser, Purchaser shall reimburse Seller for any and all out-of-pocket costs, including but not limited to Transfer Taxes described in Section 10.14, incurred by the Seller through the date of termination in connection with the consummation of the Spin-Off.

(c) Notwithstanding the foregoing to the contrary, nothing in this Agreement shall relieve either party from liability or damages resulting from any breach of this Agreement, provided that neither party shall be entitled to claim, and hereby expressly waives any right to, any and all lost profits, lost revenues, lost opportunities and consequential, punitive and other special damages (regardless of legal theory).

# Congress of the United States

Washington, DC 20515

May 20, 2008

Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

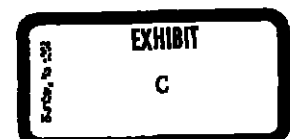
**RE: Finance Docket No. 35087, Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company**

Dear Ms. Quinlan:

We write to express our opposition to the Canadian National Railway Company and Grand Trunk Corporation's (CN) *Request for Establishment of Time Limits for NEPA Review and Final Decision* filed in the above referenced docket (Filing 222352).

In their filing, CN requests that the Surface Transportation Board (STB) pursuant to 40 C.F.R. § 1500.8 establish a schedule that would result in the STB issuing a Final Decision in the transaction on December 1, 2008. CN centers this request on the fact that the Stock Purchase Agreement (SPA) signed by CN and EJ&E (a wholly owned subsidiary of United States Steel Corporation (USS)) did not anticipate an extensive and thorough regulatory and environmental review by the STB and therefore established a date of December 31, 2008, for the completion of the transaction. CN states that on that date "either party may be able to terminate the Agreement, and neither party may be able to compel the other to close." CN further states that if the parties cannot close by that date "it would have lost over a year's worth of time and millions of dollars in expenses related to the Transaction." It appears that CN's main argument is based on the possibility that the company will lose money and face an uncertain business environment if they do not complete the transaction by the "drop-dead" date. However, 40 C.F.R. § 1500.8, does not list the monetary cost to a company and the company's ability to make "fundamental business decisions" as factors that a federal agency should consider when requested to establish time limits for an environmental review process. Therefore, CN does not meet the criteria established by the Council on Environmental Quality and CN should not expect the STB to place their company's bottom line above the quality of life and economic vitality of Northwest Indiana.

Additionally, the Filing states that "this Transaction is important to CN" and on the same page acknowledges that "USS cannot be expected to let the unused EJ&E capacity go to waste indefinitely." If this transaction is so beneficial to both parties, it would be logical to believe that the SPA could be amended by mutual consent and allow the STB to consider this transaction in a reasoned fashion.



Ms. Anne K. Quinlan  
May 20, 2008  
Page 2

Further, on November 27, 2007, the Board issued the decision that required the Section of Environmental Analysis (SEA) to prepare an Environmental Impact Study (EIS). In that decision the Board states, "The time the EIS will take to prepare cannot be determined ahead of time because there is no way to predict in advance all of the specific issues that may arise. In prior cases, the EIS process has ranged from approximately 18 months to several years." This decision should have provided ample warning to the CN and USS that the "drop dead" date of December 31, 2008, was insufficient and that the SPA would need to be amended.

Unfortunately the urgency for finality expressed by CN in Filing 222352, has not been present in their dealings with the residents, jurisdictions and transportation organizations in Northwest Indiana who will be negatively impacted by the dramatic increase in train traffic that is proposed in this transaction. While we acknowledge that CN has met with municipalities, the Gary Chicago International Airport, and the Northern Indiana Commuter Transportation District, we are unaware of any signed agreements with these parties, proposed concessions, or even fruitful negotiations. These parties deserve at the least the same sense of urgency from CN that CN is requesting from the Board.

In conclusion, we completely disagree with CN's assertion that an extensive environmental review process will be merely "controversy induced." In making this claim, CN is dismissing the legitimate public safety, environmental, economic, and infrastructure concerns raised by communities, businesses and residents on the EJ&E arc in Northwest Indiana and Illinois. We urge the STB to reject CN's request and allow the SEA to carry out the NEPA review in a deliberate and prudent manner.

We appreciate your serious consideration of this matter.

Sincerely,



Richard G. Lugar  
United States Senator



Evan Bayh  
United States Senator



Peter J. Visclosky  
Member of Congress

Cc: Chairman Charles "Chip" Nottingham  
Cc: Vice Chairman Francis P. Mulvey  
Cc: Board Member W. Douglas Buttrey  
Cc: Ms. Victoria J. Rutson  
Cc: All Parties of Record

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2008, I served the foregoing document, **Village of Wayne's Reply to Applicants' Request for Establishment of Time Limits for NEPA Review and Final Decision** to be served via first class mail, postage prepaid, or by a more expeditious method of delivery, on all parties of record and on the following


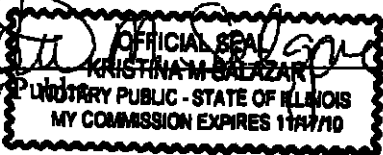
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\_\_\_\_\_  
Susan DiSalvo

**SUBSCRIBED and SWORN to**  
before me this 2nd day of June, 2008

  
Notary Public - State of Illinois  


## SERVICE LIST

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